

**BRIGHAM CITY APPEAL AUTHORITY
FEBRUARY 13, 2008 – MEETING MINUTES**

PRESENT:	George Berkley Don Peart Jaye Poelman Jess Palmer Barbara Stokes Holly Bell	Chairman Vice Chair Member Member Alternate (Acting as a Member) Alternate (Not Participating)
ALSO PRESENT:	Jeff Leishman	Associate Planner
EXCUSED:	Marilyn Peterson	Member

AGENDA:

1. APPROVAL OF THE AGENDA
2. APPROVAL OF THE JANUARY 09, 2008 MEETING MINUTES
3. ~~APPLICATION #613 / VARIANCE / 515 WEST FOREST / RANDY CAPENER~~
4. APPLICATION #614 / VARIANCE / 44 NORTH 600 EAST / FRED & TAMARA CANNON

George Berkley opened the meeting at 5:34 p.m.

APPROVAL OF THE AGENDA

MOTION: A motion was made by Jess Palmer to approve the agenda as written. The motion was seconded by Barbara Stokes and passed unanimously.

APPROVAL OF THE JANUARY 09, 2008 MEETING MINUTES

On page 6, end of line 294, the words 'than if' should be changed to 'then it'.

MOTION: A motion was made by Don Peart to approve the minutes of the January 09, 2008 meeting as amended. The motion was seconded by Jaye Poelman and passed unanimously.

APPLICATION #614 / VARIANCE / 44 NORTH 600 EAST / FRED & TAMARA CANNON

Fred and Tamara Cannon came forward. Mrs. Cannon stated that they would like to build a house on the property located at 44 North 600 East. She pointed out that the creek cuts the property in half and if they follow the requirement of having 30-feet beyond the property line, their home would be slightly in the creek. There is a 21-foot easement from the curb to the property line. They feel there is enough room

that they could have a variance and not have the home required to be 30-feet back because with the easement and that requirement it would be 51-feet, which is quite a way back from the curb.

Mr. Berkley commented that they all should have had the opportunity to review the application. There are five different items that need to be satisfied in order to grant the variance. Mr. Berkley told the Cannons that he thought they did a great job in writing up the issue, concerns and requirements for each of the five items.

Mr. Leishman referred everyone to the drawing from Greg Hansen. Mr. Berkley invited those that would like to join them in looking at the drawing to come forward.

Mr. Leishman pointed out that parcel one is what is being addressed. He said the request is that the applicant be in line with the home directly north of parcel one; the Don Conrad home. Mr. and Mrs. Cannon requested a 17-foot front yard variance to allow a home to be built within 13-feet of the front property line where 30-feet is required by ordinance. If this variance is granted, the Cannon home will have a setback similar to the home directly north of the subject property, which is also impacted by Box Elder Creek. The home directly north was constructed in 1980. Board of Adjustment files have been searched for this home since it was assumed a variance was granted for the neighbor's structure. As of this date, the search is not complete due to much of the City files being temporarily in storage at the Utah State Prison as they are microfilming the files. It is assumed that the home directly north received a variance. Mr. Leishman stated that the standard under which they are operating here is very similar to when the home to the north was built. Most of the standards were adopted in 1973. What is being asked for, in this case, is the same consideration that is assumed was given to the Don Conrad home; which property is similarly impacted by Box Elder Creek.

Mr. Leishman pointed out the property stake in the photograph. That stake is in front of the home on the property line. The applicant is asking for consideration of 13-feet back from that stake, which is right in line with the home directly north. Mr. Leishman explained the drawing. The dark line is the property line. On the top right-hand corner of parcel number one will be the property stake. In front of that is a right-of-way. The road is 49.5-feet from property line to the center of the street and from the center of the street to the west property line is another 49.5-feet; altogether 99-feet. The right-of-way is 99-feet and the asphalt is probably close to 40-feet. From curb and gutter to property line is really right-of-way, not an easement. All of the north-south streets in the old platted area are 99-feet wide and generally from curb and gutter to property line is about 23-feet. The normal standard setback from the curb and gutter to the property line varies throughout the city. In the new subdivisions, from back of curb and gutter to property line is always 10-feet, unless there is no sidewalk and then it varies. The east-west streets are only 66-feet wide, which makes the area from curb and gutter to property line 13-feet. There is a lot of variation throughout the city and is more standard in the new subdivisions.

Don Peart clarified that what is being proposed is a 13-foot front yard, which requires a 17-foot variance where the standard is 30-feet. Mr. Leishman agreed.

Mr. Berkley asked if it would be appropriate to have the applicants read their write-up for the record. Mr. Leishman replied that generally comments are read so the audience can participate and understand what is being done. Mr. Berkley asked that one of the Cannons read the write-up they presented as their justification for the variance.

Mr. and Mrs. Cannon addressed Variance No. 1:

- i. Literal enforcement of the Ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Land Use Ordinance.

Answer: They would like to make a deviation from the Land Use Ordinance. It is necessary because the owners of the land, parcel one, cannot build a house because of the setback ordinance. The back of the house would either be on the banks or in the creek.

The general purpose of the Land Use Ordinance would not be affected for two reasons. One, the property to the north (Don Conrad 56 North 600 East) has the same circumstances; the creek runs through their property. Their house is 13-feet from the property line. If the house was built even with Don Conrad's, it would blend in with the neighborhood. Two, this property has a very large easement, 21-feet from curb to property line. The house would still be a reasonable distance from the street even with a setback variance.

- ii. There are special circumstances attached to the property that do not generally apply to other properties in the same zone.

Answer: Because of the location of the creek, it would be impossible, or at least not wise, to put a custom home on the property without an exception to the setback requirement. Without a variance, the land might be useless for future development. These circumstances also affect the house to the north and a precedent has been set by allowing that house to be built 13-feet from the property line.

- iii. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.

Answer: A nice home is better for property values in a neighborhood than a vacant lot. Vacant lots sometimes turn into dumping grounds; this possibility is eliminated when the lot is developed.

- iv. The variance will not substantially affect the General Plan and will not be contrary to the public interest.

Answer: Placing the house with the same setback as the house to the north will not affect the General Plan for low density residential housing. If the front setback variance is granted, it will be very compatible with the two homes that border the property. It will blend in nicely with the neighborhood it is in. A nice home is better for property values than a vacant lot, which is in the public's interest. It is in everyone's interest to keep the house farther away from the creek than nearer to it because of potential flooding.

- v. The spirit of the Land Use Ordinance is observed and substantial justice done.

Answer: The spirit of the ordinance is to have the homes blend in with the neighborhood and be a good fit for the neighborhood. Allowing this home to be moved closer to the street will fulfill the spirit of the ordinance.

There is a large easement on the property, 21-feet from curb to property line. If the house was set 30-feet beyond the property line it would be 51-feet from the street. The spirit of the Land Use Ordinance is also having a safe environment. By granting a variance, the house will be 34-feet from the curb. This is a safe distance and in keeping with the spirit of the ordinance.

Mr. Berkley asked if there were any comments from the neighbor notification that was sent out. Mr. Leishman replied that there was one comment from the owner of the Baron Woolen Mill. Mr. Leishman stated that he relayed to him what was happening and had no comment back. There was one additional request asking for information that came in as an email. There have been no objections or support, just questions as to what the application was about. Mr. Berkley invited anyone that would like to comment on this matter to come forward.

Lisa Bertine came forward and stated that she owns the property on the other side of Don Conrad. She stated that the request is reasonable because the setback is compatible with what Mr. Conrad's house is. She said she would rather have a house there than a vacant lot and felt that the request should be granted.

Barbara Stokes commented that a precedent had been set and should be recognized. She agreed with Mr. Berkley that the Cannon's presentation was very well done. The comment about vacant lots is

important and a home on a lot has more value, thus making tax revenues greater which are a plus for the City.

Mr. Berkley commented that the proceedings are recorded. If anyone appeals the decision, it is the written word that goes to the District Court. Often, things are repeated so it is clear what is understood to be findings of fact. As members of this board, they have to address each of the five different issues, indicating the findings of fact they consider of importance in substantiating or negating the request. Mr. Berkley said he asked himself what he would do if he were to approve this application. Basically, he changed a few of the applicant's words and since they did such a great job, he didn't have to repeat or change anything significantly. He commented that if all applicants did that well it would not be up to them to come up with rationale for why they think their request is reasonable. It does satisfy the requirements; it is not a personal issue.

Mr. Berkley stated that the Chairman can make a motion and will do so because he tried to follow a method of analyzing the applicant's words as a means of justifying their request. He changed a few words and moved a few things around but it is basically the applicant's information.

Motion: A motion was made by George Berkley to approve application #614 based on the following findings of fact. This is a variance and it must satisfy the five criteria.

- i. Literal enforcement of the Ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Land Use Ordinance. Finding of fact; it is necessary because the owners of the land cannot build a house because of the setback ordinance. The back of the house would either be on the banks or in the creek. The general purpose of the Land Use Ordinance would not be affected for two reasons. One, the property to the north has the same circumstance; the creek runs through the property. Their house is 13-feet from the property line. If a house was built even with the house to the north it would blend in with the neighborhood. Two, this property has a very large easement, 21-feet from curb to property line. The house would still be reasonable distance from the street even with a setback variance.
- ii. There are special circumstances attached to the property that do not generally apply to the other properties in the same zone. Justification/finding of fact; because of the location of the creek, it would be impossible or at least not wise to put a custom home on the property without an exception to the setback requirement. Without a variance the land might be useless for future development.
- iii. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone. Finding of fact; the creek in the backyard of the house to the north allowed that house to be built 13-feet from the property line. There is a similar situation in the area where the people with the same situation had been granted a variance to allow them to use their property and enjoy it.
- iv. The variance will not substantially affect the General Plan and will not be contrary to the public interest. Finding of Fact; placing the house with the same setback as the house to the north will not affect the General Plan for low density residential housing. If the front setback variance is granted, it will be very compatible with the two homes that border the property. It will

blend in nicely with the neighborhood it is in. A nice home is better for property values than a vacant lot, which is in the public's interest. It is in everyone's interest to keep the house farther away from the creek than nearer to it because of potential flooding.

- v. The spirit of the Land Use Ordinance is observed and substantial justice done. Justification/finding of fact; the spirit of the ordinance is to have the homes blend in with the neighborhood and be a good fit for the neighborhood. Allowing this home to be moved closer to the street will fulfill the spirit of the ordinance. There is a large easement on the property, 21-feet from curb to property line. If the house was set 30-feet beyond the property line it would be 51-feet from the street. The spirit of the Land Use Ordinance is also having a safe environment. By granting a variance, the house will be 34-feet from the curb. This is a safe distance and in keeping with the spirit of the ordinance.

The motion was seconded by Barbara Stokes and the motion passed unanimously.

Mr. Berkley stated that if anyone disagreed with the decision, they have 30-days to submit an appeal to the District Court.

Mr. Leishman explained that the application for Dr. Randy Capener was scheduled for this meeting; however, he asked to be removed from the agenda. He has reconfigured his lot for a doctor's office on the corner of 500 West and Forest Street. Notice will be resent to the paper and the application will be reviewed on February 27, 2008 at 5:30 p.m.

Motion: A motion was made by Don Peart to adjourn. The motion was seconded by Jaye Poelman and passed unanimously.

The meeting adjourned at 6:03 p.m.

This certifies that the minutes of February 13, 2008 are a true and correct copy as approved by the Appeal Authority on February 27, 2008.

Signed: _____
Jeffery R Leishman - Secretary